

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 127 of 1999

in

SPECIAL CIVIL APPLICATION No 6345 of 1998

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR CK THAKKER and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

BODAKDEV GRAM PANCHAYAT THROUGH AUTHORISED SIGNATORY

Versus

STATE OF GUJARAT

Appearance:

MR YF MEHTA for Appellant
Mr.Pancholi, Assistant GOVERNMENT PLEADER,
for Respondent Nos. 1 and 2.
Mr.M.B. Gandhi, Advocate, for respondent No.3.

CORAM : ACTING CHIEF JUSTICE MR CK THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 10/03/99

ORAL JUDGEMENT: (Per C.K. Thakkar, Acting C.J.)

Admitted. Mr.Pancholi, AGP, appears and waives service of notice of admission on behalf of respondents No.1 and 2 and Mr.M.B. Gandhi appears and waives service of notice of admission on behalf of respondent No.3. In the facts and circumstances of the case, the matter is taken up for final hearing today.

The petition was dismissed by the learned Single Judge only on the ground that an alternative remedy by way of appeal under Section 203 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code') is available to the petitioner-appellant. Since a statutory remedy was available, according to the learned Single Judge, the petition could not be entertained.

Mr.Gandhi, learned counsel for respondent No.3, concedes that in the facts and circumstances of the case, remedy under Section 203 of the Code is not available. In view of the said statement, in our opinion, the order passed by the learned Single Judge deserves to be set aside and is accordingly set aside. Since the matter is not decided on merits by the learned Single Judge, the matter must now go back to the learned Single Judge so that it can be decided on its own merits. The learned Single Judge will decide the matter without being influenced in any manner by the observations made hereinabove. So far as the status quo is concerned, it will continue to operate upto 22nd March, 1999. It is open to the parties to raise all contentions before the learned Single Judge available to them. Appeal is accordingly disposed of. In the facts and circumstances of the case, no order as to costs.

(apj)